

### **REMARKS/ARGUMENTS**

Claims 1 - 19 are pending in the application.

Although claims 6 – 17 have been indicated as being withdrawn, Applicant respectfully requests reinstatement of claims 6 – 9 since these claims depend directly or indirectly upon claim 1.

With regard to claim 2, and the reference to PETE, it is respectfully submitted that rather than being a trademark, this is the common abbreviation for polyethelene terephthalate (see attached Exhibit 1). However, page 3 of the specification has been amended to indicate the full chemical name of PETE, and claim 2 has also been appropriately amended.

In order to more clearly distinguish the present invention from the cited references, claim 1 has been amended to indicate that the disposable media has an integral mounting hole, and also to indicate that means are provided to friction fit the coated media, via the mounting hole, on a support for the nectar type bird feeder. Support for the mounting hole feature can be found at the bottom of page 5 and on page 6, the last paragraph, of the specification. Support for the friction limitation can be found, for example, on page 6, line 21.

In addition, although Applicant believes that the language “for use in preventing insect contamination of nectar type bird feeders” in the preamble to claim 1 should be considered (see MPEP section 2111.02), claim 1 has been further amended to indicate that the coated media is friction fitted on a support for the nectar type bird feeder. It is therefore respectfully submitted that neither Olson nor Erickson are proper references pursuant to MPEP section 2131 since they do not teach the identical invention as shown in as complete detail as is contained in Applicant’s

amended claim 1. In particular, neither of the cited references teaches or suggests a means to friction fit a coated media, via a mounting hole, on a support for a nectar type bird feeder, as required by Applicant's amended claim 1. Furthermore, Olson certainly provides no integral mounting hole in a disposable water-resistant media, again as required by Applicant's amended claim 1. Rather, Olson provides a band that has to be unwound and then wrapped around a wide tree trunk. Thus, Olson furthermore provides no means to friction fit a coated media, via a mounting hole, on a support for a nectar type bird feeder.

Claim 1 has additionally been amended to indicate that the "coated media is adapted to act as a physical barrier to block insect crawling routes along said support for said bird feeder". Pursuant to the last paragraph of MPEP section 2173.05(g), such "adapted to" language serves to precisely define structural attributes of interrelated component parts of the claimed assembly. The Examiner's attention is also directed to the 1990 Court of Appeals for the Federal Circuit case of Pac-Tech, Inc. v. Amerace Corp (903 F2d 796), which held that in determining whether a claim is anticipated, it is improper to disregard limitations that include "adapted to"; the language in question was held to constitute structural limitations. The Court, in citing an earlier case, also affirmed that "functional language, in cases like the present, cannot be disregarded".

Applicant would also like to point out that whereas the instant application relates to an insect barrier device, the cited references of Olson and Erickson relate to insect trapping devices. For example, Erickson, on page 1, lines 7 and 8, indicates that the object of his invention is to provide "means for trapping or capturing insects". Olson, for example in column 3, makes repeated reference to the

insect trapping adhesive 20 or 120. Applicant respectfully submits that there is a significant difference between insect barriers and insect traps, especially when trying to prevent ant or other insect contamination of nectar type bird feeders. For example, due to the large numbers of ants that are attracted to nectar type bird feeders, if a device functions to trap the ants, very quickly such a number of ants are trapped that the accumulation thereof actually forms a bridge over the adhesive of such a trap. Not only does this obviate the function of the device, it provides for an unpleasant appearance and, of course, the device, or at least the adhesive portion thereof, must be replaced. For example, Erickson references the replenishing of the insect trap (page 1, lines 12 and 13 and also lines 65 – 78). In contrast, Applicant's insect barrier device causes the ants to back up and abort their attempt to cross the non-drying adhesive layer on the surface of the disposable media. The Examiner's attention is also directed to the discussion on page 3 of the instant application.

In view of the foregoing discussion, Applicant respectfully requests reconsideration of the allowability of amended claim 1, as well as those claims dependent thereon. In addition, should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call from him in order to discuss any outstanding issues and to expedite placement of the application into condition for allowance.

Respectfully submitted,



Robert W. Becker, Reg. 26,255  
Attorney for Applicant(s)

ROBERT W. BECKER & ASSOCIATES  
707 Highway 66 East, Suite B  
Tijeras, New Mexico 87059  
RWB:mac - Attachment: Exhibit 1

Telephone: 505 286 3511  
Telefax: 505 286 3524

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## Polyethylene Terephthalate (PETE, #1)

**Note:** Resin profile definitions, their properties and applications (listed as Demand) are taken directly from The Plastics Technology Center.

PETE is a clear, tough plastic with good gas and moisture barrier properties.

### Typical End Uses

This plastic is used in soft drink bottles and other blow-molded containers, although sheet applications are increasing. Cleaned, recycled PETE flakes and pellets are in great demand for spinning fiber for carpet yarns and producing fiberfill and geotextiles. Other applications include strapping, molding compounds, and food and non food containers. (American Plastics Council, adapted from *Modern Plastics Encyclopedia*, 1995.) See National Association for Plastic Container Recovery (NAPCOR) <http://www.napcor.com/index.html> for more complete information on PETE resin, recycling, and marketing information.

### Supply

In 1997, 4.2 billion pounds of virgin thermoplastic polyester resin were produced in the U.S (SPI). In March 1996, Franklin & Associates estimated for EPA the amount of PETE in products discarded in the municipal waste stream. Franklin & Associates estimated that 780,000 tons of PETE products were discarded in the waste stream in 1994. Franklin also estimated that 350,000 tons of PETE were recycled in the U.S. in 1994.

The CIWMB's Rigid Plastics Packaging program has estimated the amount of PETE rigid containers sold in California at about 121,000 tons in 1996, with about 44,000 tons recovered in the state.

See also the Society of the Plastics Industries (SPI) Web site at <http://www.socplas.org> for information and data on PETE production, and the Environmental Defense Fund (EDF) Web site at <http://www.edf.org/pubs/Reports/PlasticsRecycling/> for information and data on PETE plastic production and recycling in the U.S.

### Demand

Estimates are not available for the amount of PETE postconsumer resin (PCR) used as manufacturing feedstock in California. In general, recycled PETE can be incorporated and is used to manufacture the following items:

- Beverage containers
- Clothing
- Hats
- Luggage
- Health care product containers
- Fiberfill (insulation)
- Carpet
- Furniture

S/N 10/753,660  
Prel Amd dated Feb 6, 2006  
Office Action dated Oct 5, 2005  
Exhibit 1